

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION**

FILED

SEP 19 2019

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY dy DEPUTY CLERK

UNITED STATES OF AMERICA

v.

**STELLA ADAMS,
Defendant.**

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Criminal No. DR-18-CR-1521-AM**ORDER**

Before the Court is the Defendant's Motion to Suppress. (ECF No. 27.) The Court has carefully reviewed the parties' briefings, (ECF Nos. 27, 28, and 29), as well as the evidence and arguments adduced at the hearing held on October 18, 2018. Having considered all relevant facts and legal arguments, the Court has determined that the Defendant's Motion to Suppress should be **DENIED**.

I. FACTUAL FINDINGS AND PROCEDURAL HISTORY

On June 30, 2018, Kinney County Sheriff's Office Deputy James Michael McCourt was parked with his lights off (or "blackout") on the side of Highway 90 near the Kinney County and Val Verde County border. At approximately 3:00 AM, Deputy McCourt observed the Defendant, Stella Adams, drive past his patrol vehicle in a tan Toyota Sienna, traveling eastbound at approximately 10 miles under the posted speed limit of 75 miles per hour. Deputy McCourt then entered Highway 90 traveling eastbound behind the Defendant. At this point, Highway 90 is a two-lane highway, with one lane traveling in each direction. Around mile marker 442, Highway 90 expands to three lanes, two lanes traveling eastbound and one westbound, to enable passing on the eastbound side. Deputy McCourt observed the Defendant cross from the left lane to the right lane without using her turn signal when changing lanes in violation of the Texas Transportation

Code.¹ As a result, Deputy McCourt conducted a traffic stop at approximately 3:20 AM. Deputy McCourt's dashcam was operational during the time in question.

Upon approaching the Defendant's vehicle, Deputy McCourt observed the Defendant, Stella Adams, and another woman in the car. He asked for identification from the two women. The Defendant provided a Texas state-issued identification card and the passenger provided a Florida driver's license.² Deputy McCourt then noticed a person in the seat behind the front passenger seat, later identified as an undocumented immigrant, Norvin Tercero-Gutierrez. He was covered completely in a blanket and was not wearing a seatbelt. Deputy McCourt asked the Defendant to identify the person in the backseat and she replied that he was her son. Deputy McCourt opened the backdoor to speak with the rear passenger and asked him his name in Spanish. The Defendant said, "Chris, tell him your name." The rear passenger did not respond to any of Deputy McCourt's questions in either English or Spanish. Deputy McCourt also asked the Defendant where she was going, and she said she was traveling to San Antonio to pick up her husband. She claimed she was coming from the casino in Eagle Pass, Texas, and that she had been there for a few days, but she had no luggage in the vehicle. Deputy McCourt suspected that the Defendant may be involved in an illegal alien transportation venture based on his knowledge that Highway 90 is a common route for transporting aliens at that time at night, coupled with the suspicious behavior exhibited by the Defendant and her backseat passenger.

¹ See TEX. TRANSP. CODE ANN. § 545.104(a) ("An operator shall use the signal authorized by Section 545.106 to indicate an intention to turn, change lanes, or start from a parked position.").

² Deputy McCourt testified that he later discovered that the Defendant was driving with a suspended license, but he decided not to charge her for that violation. He did not discover the Defendant had a suspended license until after he conducted the traffic stop.

Deputy McCourt asked the Defendant to turn off her vehicle and give him the keys. At this point the stop had lasted about two minutes. He then called Border Patrol Agent Jose Coronado arrived about ten minutes later. The Defendant told Agent Coronado a similar story as to what she told Deputy McCourt, except she told Agent Coronado that she was in Eagle Pass for one day instead of two days.

Agent Coronado spoke with Tercero-Gutierrez and discovered that he was an undocumented immigrant. At that point, the Defendant was placed under arrest and all three individuals were transported to the Border Patrol station in Bracketville, Texas. The Defendant's vehicle was also transported to the Border Patrol station. At that time, Agent Coronado performed a canine sniff around the vehicle. The canine alerted to the driver's side door. Upon searching the center console of the vehicle, Agent Coronado found a purse which contained a pipe and a baggie which appeared to contain methamphetamine. The substance was tested and weighed and was ultimately determined to contain one gram of methamphetamine.

At the Border Patrol station, the Defendant was interviewed by Border Patrol Agent Hector Garcia and Homeland Security Investigations Special Agent Stephen Griffith. Special Agent Griffith read the Defendant her *Miranda* warnings before speaking with her and she waived her rights.³ Special Agent Griffith testified that neither he nor Agent Garcia threatened the Defendant. He also testified that the Defendant was interviewed in a small, private interview room in the station, that she was not handcuffed, and that she appeared to be comfortable. The agents were armed with handcuffs and their service weapons, which were concealed. The Defendant then

³ The Defendant signed a waiver of her *Miranda* rights, which was entered as Government's Exhibit 4 at the suppression hearing held October 18, 2018.

consented to a cell phone search.⁴ She also wrote her 4-digit passcode used to access her cell phone on the consent form.

The Agents interviewed the Defendant for approximately 45 minutes to an hour. She stated that she traveled to Del Rio, Texas to pick up the illegal alien and that she was communicating with another person to arrange the transportation. She also said that she wanted the agents to search her cell phone because the information in it would corroborate her story.

The Defendant's Motion to Suppress asserts a three-pronged argument. The Defendant claims that: (1) Deputy McCourt did not have the requisite reasonable suspicion to stop the Defendant's vehicle because she did not violate any traffic law; (2) assuming *arguendo* that reasonable suspicion to stop the vehicle existed, Deputy McCourt's seizure of the Defendant was prolonged and unreasonable; and (3) the Defendant did not give free and voluntary consent to search her vehicle or cell phone. (ECF No. 27.) Consequently, the Defendant contends that her Fourth Amendment rights were violated, and all evidence seized from her should be suppressed as fruit of the poisonous tree. (*Id.* at 4.)

In response to the Motion to Suppress, the Government maintains that: (1) Deputy McCourt had reasonable suspicion to stop the Defendant's vehicle because she violated a traffic law; (2) the Deputy's extension of the stop was justified because he developed further reasonable suspicion that the Defendant was smuggling an illegal alien; and (3) the Defendant freely and voluntarily gave consent to search her cell phone, and the vehicle was searched as part of a valid inventory search. (ECF No. 28.)

⁴ The Defendant's signed consent form was entered as Government's Exhibit 2 at the suppression hearing.

On October 18, 2018, the Court held a hearing where testimony was elicited from Deputy James Michael McCourt, Special Agent Stephen Griffith, and the Federal Public Defender's Investigator, Oscar Barrientos. The parties also argued in support of their briefings.

II. ANALYSIS

"The Fourth Amendment guarantees individuals the right 'to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" *United States v. Macias*, 658 F.3d 509, 517 (5th Cir. 2011) (quoting U.S. CONST. amend. IV). A vehicle stop and detention of its occupants constitutes a Fourth Amendment seizure. *Id.* "The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure." *Rakas v. Illinois*, 439 U.S. 128, 130 n.1 (1978).

The seminal case, *Terry v. Ohio*, 392 U.S. 1, 19–20 (1968), established the standard used to analyze the legality of traffic stops for Fourth Amendment purposes. *Terry* instructs the Court to conduct a two-part inquiry. *Id.* First, the Court must determine "whether the officer's action was justified at its inception[.]" *Id.* at 20. And second, "whether [the officer's action] was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.*

a. **Application of the First Prong of the *Terry* Test: The Traffic Stop Was Justified at Its Inception.**

Deputy McCourt was justified in stopping the Defendant because he had probable cause to believe a crime had occurred when he observed her commit a traffic violation. "For a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, such as a traffic violation, occurred, or is about to occur, before stopping

the vehicle.” *United States v. Lopez-Moreno*, 420 F.3d 420, 430 (5th Cir. 2005). In answering the reasonable suspicion inquiry, the Court considers the totality of the circumstances regarding whether an officer has a “particularized and objective basis” for suspecting legal wrongdoing. *United States v. Cortez*, 449 U.S. 411, 417 (1981). Reasonable suspicion is a less stringent standard than probable cause. *United States v. Arvizu*, 534 U.S. 266, 273 (2002). Initiating a traffic stop, therefore, “is reasonable where the police have probable cause to believe that a traffic violation has occurred.” *Whren v. United States*, 517 U.S. 806, 810 (1996).

Here, Deputy McCourt observed the Defendant commit a violation of the Texas Transportation Code, and thus it was objectively reasonable to initiate the traffic stop. Deputy McCourt testified that he observed the Defendant change lanes without indicating. As a result, probable cause existed to believe that Texas Transportation Code § 545.104(1) was violated. It was objectively reasonable for Deputy McCourt to conclude that this moving violation posed a danger to people and property. Accordingly, a violation of Texas Transportation Code § 545.104(1) serves as an objectively reasonable justification for Deputy McCourt to initiate the traffic stop. *See Lopez-Moreno*, 420 F.3d at 431–32.

The Defendant contends that when the highway split from one lane into two lanes that she followed the white line dividing the road and the shoulder, smoothly transitioning from one lane into the right lane without ever crossing the dotted middle line dividing the two lanes. She further argues that the dashcam video clearly shows this. This Court disagrees. Due to the glare from an oncoming vehicle’s headlights and the distance between the Deputy’s vehicle and the Defendant’s vehicle, the video recording is less than clear. The Court, however, believes Deputy

McCourt's testimony that the Defendant's changed lanes after the split in the lanes of traffic, and crossed the broken white line without signaling. The Court finds Deputy McCourt to be credible.

Even if the Defendant did not cross the marked line dividing the lanes but followed the solid white line when the single lane became two as she argues, the stop does not violate the Defendant's Fourth Amendment right against unreasonable search and seizure. "Under this standard, a search or seizure may be permissible even though the justification for the action includes a reasonable factual mistake." *Heien v. North Carolina*, 135 S. Ct. 530, 534 (2014). Deputy McCourt was following the Defendant 500–700 feet behind the Defendant's vehicle and testified credibly that he observed the Defendant cross the marked line without signaling. If the Deputy was mistaken as to whether the Defendant violated the traffic code, this Court finds that the mistake was reasonable.

b. Application of the Second Prong of the *Terry* Test: Deputy McCourt's Actions Subsequent to the Stop Were Reasonably Related in Scope to the Circumstances that Justified the Stop.

Deputy McCourt's actions did not exceed the scope of the traffic stop in violation of the Defendant's Fourth Amendment rights. A traffic stop "may last no longer than required to effect the purpose of the stop." *United States v. Jenson*, 462 F.3d 399, 404 (5th Cir. 2006). "A recognized exception to this rule is that if additional reasonable suspicion arises in the course of the stop and before the initial purpose of the stop has been fulfilled, then the detention may continue until the new reasonable suspicion has been dispelled or confirmed." *Lopez-Moreno*, 420 F.3d at 431; *see also United States v. Brigham*, 382 F.3d 500, 507 (5th Cir. 2004). "Reasonable suspicion exists when the detaining officer can point to specific and articulable facts

that, when taken together with rational inferences from those facts, reasonably warrant the . . . seizure.” *United States v. Estrada*, 459 F.3d 627, 631 (5th Cir. 2006). When an officer has reasonable suspicion that additional criminal activity is afoot, “he may further detain the vehicle’s occupants ‘for a reasonable time while appropriately attempting to dispel this reasonable suspicion.’” *Id.* (quoting *United States v. Pack*, 612 F.3d 341, 350 (5th Cir. 2010), *modified on denial of reh’g*, 622 F.3d 383 (5th Cir. 2010)).

Deputy McCourt’s initial reason for the stop of the Defendant’s vehicle was the violation of the Texas Transportation Code. Within two minutes of the stop, Deputy McCourt testified that he developed further suspicion that the Defendant was possibly smuggling an illegal alien. First, the backseat passenger was completely covered in a blanket and not wearing his seatbelt when the Deputy first observed him. Then, the Deputy asked for the identities of all the individuals in the vehicle, yet the passenger in the backseat did not identify himself or respond to any of the Deputy’s questions in either English or Spanish. Further, Deputy McCourt believed that the Defendant was coaching the passenger as to what to say to him, specifically by saying, “Chris, tell him your name.” This information, combined with the fact that the Deputy knew that Highway 90 is a known smuggling route at that time of night based on his training and experience, gave Deputy McCourt further reasonable suspicion that the Defendant may be involved in alien smuggling and allowed him to reasonably extend the stop to further investigate.

After Deputy McCourt formed the requisite reasonable suspicion to prolong the stop, the stop was still not unreasonably extended. Deputy McCourt called for Border Patrol to come to the scene of the traffic stop to further investigate his suspicions of alien smuggling. Border Patrol

Agent Coronado arrived on the scene within ten minutes, deduced that Tereco-Gutierrez was an illegal alien, and transported him, the Defendant, and her other passenger to the Border Patrol station. The Court finds the Deputy's actions were reasonably related in scope to the circumstances that justified the stop, and furthermore, that the Deputy's additional suspicion and extension of the stop was justified.

c. The Defendant's Consent to Search Her Cell Phone was Voluntary, and the Search of her Vehicle was a Valid Inventory Search.

"It is well settled under the Fourth and Fourteenth Amendments that a search conducted without a warrant issued upon probable cause is 'per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions.'" *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). One exception to the warrant requirement "is a search that is conducted pursuant to consent." *Id.* The Court must consider "four distinct issues" when reviewing whether a search was justified by consent: (1) that consent was given; (2) that consent was voluntary; (3) that the search was within the scope of the consent; and (4) that the consenting individual had authority to consent. *United States v. Freeman*, 482 F.3d 829, 831–32 (5th Cir. 2007). "[W]here the validity of a search rests on consent, the [Government] has the burden of proving that the necessary consent was obtained and that it was freely and voluntarily given. . . ." *Florida v. Royer*, 460 U.S. 491, 497 (1983). To determine whether a defendant's consent was given voluntarily or was given due to duress or coercion "is to be determined by the totality of the circumstances." *United States v. Mendenhall*, 446 U.S. 544, 557 (1980) (citing *Schneckloth*, 412 U.S. at 227). The Fifth Circuit requires the examination of six specific factors:

- (1) the voluntariness of the defendant's custodial status;
- (2) the presence of coercive police procedures;
- (3) the extent and level of the defendant's cooperation with the police;
- (4) the defendant's awareness of his right to refuse consent;
- (5) the defendant's education and intelligence; and
- (6) the defendant's belief that no incriminating evidence will be found.

United States v. Macias, 658 F.3d 509, 523 (5th Cir. 2011) (quoting *United States v. Jones*, 234 F.3d 234, 242 (5th Cir. 2000)). “[N]o single factor is determinative.” *Id.* Next, the Court must determine whether the defendant's consent to search was “an independent act of free will” or closely connected to her unconstitutional detention, by looking to three factors: “1) the temporal proximity of the illegal conduct and the consent; 2) the presence of intervening circumstances; and 3) the purpose and flagrancy of the initial misconduct.” *Id.* (quoting *Jones*, 234 F.3d at 243).

The Defendant's sole argument is that consent to search her cell phone and vehicle was not given voluntarily because her detention was illegal due to the unlawfulness of the initial traffic stop and her subsequent detention. The Defendant mentions the Fifth Circuit's six factors for determining whether consent to search was voluntary but does not make an argument as to how the factors apply to her circumstances. She simply states that because her detention was illegal, her consent was not “an independent act of free will.”

After examining the six factors and the totality of the circumstances, the Court finds that the Defendant voluntarily consented to the search of her cell phone. First, the Defendant signed a consent to search form and provided the agents with the passcode to access her cell phone. Special Agent Griffith testified that the Defendant appeared comfortable during their interview. She was not handcuffed. The agents did not yell at the Defendant or threaten her in any way. These circumstances indicate to the Court that the Defendant was not coerced or threatened to

force her to consent to search her cell phone. Rather, Special Agent Griffith testified that the Defendant wanted the agents to search her cell phone because it would corroborate her story that she was picking up the illegal alien in Del Rio at the direction of another person, with whom she was communicating. No evidence was presented to the Court that the Defendant was so uneducated or unintelligent that she could not have consented to the search voluntarily. Taking all these circumstances in their totality, the Court finds that the Defendant consented to the cell phone search voluntarily.

The next step is to determine whether the Defendant made the choice to consent to the search independently of an illegal detention. The Court has already determined that the traffic stop was valid and the subsequent arrest and detention was legal based on the probable cause found that the Defendant was transporting an illegal alien in violation of law. Because the Defendant's consent was made voluntarily and her detention was not illegal, the motion to suppress evidence obtained by the cell phone search is denied.

Finally, the Defendant argues that she did not give voluntary consent to search her vehicle, and therefore the methamphetamine and pipe found in her purse in the center console should be suppressed. No evidence was presented that the Defendant ever consented to a vehicle search. The Court presumes here that the Defendant is making a similar argument to that of her cell phone consent to search in that because she was detained illegally that the search of her vehicle was also illegal and therefore anything recovered from the vehicle is fruit of the poisonous tree. As the Court has already discussed above, the traffic stop and seizure of the Defendant was constitutionally valid because the Deputy had reasonable suspicion to stop the Defendant and

further reasonable suspicion to prolong the stop. Moreover, Agent Coronado developed probable cause to suspect that the Defendant had violated the law by transporting an illegal alien, leading to her detention by Border Patrol.

Border Patrol transported the Defendant's vehicle to the station. Agent Coronado conducted a standard canine sniff before performing an inventory search. "[P]olice departments generally follow a routine practice of securing and inventorying the automobiles' contents" when vehicles are lawfully impounded. *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976). This procedure is to protect the police from being accused of stealing or losing property, protect the owner's property while it is in police custody, and protect the police from potential danger. *Id.* (citing *Cooper v. California*, 386 U.S. 58, 61–62 (1967)). Inventory searches, even when characterized as a "search," are considered reasonable under the Fourth Amendment. *Id.* at 370–71. The canine sniff and inventory search are routine practices for the Border Patrol. The methamphetamine and pipe were found in the Defendant's vehicle after the canine alerted to the driver's side door. Because the inventory search is a reasonable practice under the Fourth Amendment, the evidence obtained from the search will not be suppressed.

III. CONCLUSION

For these reasons, the Defendant's Motion to Suppress (ECF No. 27) is hereby **DENIED**.

SIGNED this 19th day of September, 2019.



ALIA MOSES
United States District Judge